

ORIGINAL

FILED
DISTRICT COURT OF GUAM

DEC 11 2023 *unc*

JEANNE G. QUINATA
CLERK OF COURT

@ 10:17 a.m.

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Districts of Guam and the NMI
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Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SUNG PEEL HWANG a/k/a DON
SUNGPEEL HWANG,

Defendant.

CRIMINAL CASE NO. 23-00013

PLEA AGREEMENT

Plaintiff, United States of America, by and through Shawn N. Anderson, United States Attorney for the Districts of Guam and the NMI, and Benjamin K. Petersburg, Assistant United States Attorney for the Districts of Guam and the NMI, and Defendant Sung Peel Hwang a/k/a Don Sungpeel Hwang, and the Defendant's counsel, Rawlen Mantanona, agree to the following Plea Agreement:

1. **Guilty Plea and Maximum Statutory Penalties:**

The Defendant, SUNG PEEL HWANG, agrees to plead guilty to Counts 15 and 17 of the Indictment filed on April 19, 2023, charging the Defendant with Bank Fraud, in violation of 18 U.S.C. § 1344(1) and Money Laundering, in violation of 18 U.S.C. § 1957.

The Defendant, SUNG PEEL HWANG, understands that Bank Fraud is a Class B felony.

1 The Defendant also understands that the maximum statutory penalty for Bank Fraud, in violation
2 of 18 U.S.C. § 1344(1), is not more than 30 years imprisonment; a fine not to exceed \$1,000,000;
3 a term of supervised release of not more than 5 years; restitution; and a \$100 special penalty
4 assessment.

5 The Defendant, SUNG PEEL HWANG, further understands that Money Laundering is a
6 Class C felony. The Defendant also understands that the maximum statutory penalty for Money
7 Laundering, in violation of 18 U.S.C. § 1957, is not more than 10 years imprisonment; a fine not
8 to exceed \$250,000; a term of supervised release of not more than 3 years; restitution; and a \$100
9 special penalty assessment.

10 The Defendant, SUNG PEEL HWANG, understands that a violation of a condition of
11 supervised release carries an additional penalty of re-imprisonment for all or part of the term of
12 supervised release without credit for time previously served on post-release supervision.

13 2. The Court's Role in Plea and Sentencing Procedure:

14 The Court is not a party to this Plea Agreement. Sentencing is a matter that is solely within
15 the discretion of the Court. The Defendant understands that the Court is under no obligation to
16 accept any recommendations made by the United States and/or by the Defendant; that the Court
17 will obtain an independent report and sentencing recommendation from the U.S. Probation Office;
18 and that the Court may, in its discretion, impose any sentence it deems appropriate up to the
19 statutory maximums stated in this Plea Agreement.

20 The Defendant acknowledges that no promises of any type have been made to the
21 Defendant with respect to the sentence the Court will impose in this matter. The Defendant
22 understands that the Court is required to consider the applicable sentencing guideline range, but
23 may depart upward or downward under the appropriate circumstances.

24 The Defendant also understands that should the sentencing judge decide not to accept any

1 of the parties' recommendations, that decision is not a basis for withdrawing from this Plea
2 Agreement or a basis for withdrawing this plea of guilty.

3 The Defendant understands that the Court shall accept the Defendant's unconditional guilty
4 plea as long as it meets the requirements of Fed. R. Crim. P. 11(b). The Court will therefore
5 conduct a limited inquiry to determine whether the Defendant's plea is knowing, voluntary and
6 intelligent, and has a sufficient factual basis.

7 3. Waiver of Constitutional Rights:

8 The Defendant, SUNG PEEL HWANG, understands that by entering this plea of guilty the
9 Defendant is knowingly and voluntarily waiving certain constitutional rights, including:

- 10 (a). The right to a jury trial;
- 11 (b). The right to see, hear and question the witnesses;
- 12 (c). The right to remain silent at trial;
- 13 (d). The right to testify at trial; and
- 14 (e). The right to compel witnesses to testify.

15 While the Defendant is waiving certain constitutional rights, the Defendant understands
16 the Defendant retains the right to be assisted through the sentencing and any direct appeal of the
17 conviction and sentence by an attorney, who will be appointed at no cost if the Defendant cannot
18 afford to hire an attorney. The Defendant also acknowledges that any pretrial motions currently
19 pending before the Court are waived.

20 4. Elements of the Offense:

21 The United States and the Defendant agree that in order to convict the Defendant of Bank
22 Fraud, in violation of 18 U.S.C. § 1344(1), the United States would have to prove beyond a
23 reasonable doubt the following elements:

- 24 (a). First, the Defendant, knowingly executed a scheme to defraud a financial

1 institution of something of value;

2 (b). Second, that the statements made as part of the scheme were material; that
3 is, they had a natural tendency to influence, or were capable of influencing, a person to part
4 with money or property;

5 (c). Third, the Defendant did so with the intent to defraud the financial
6 institution; and

7 (d). Fourth, the financial institution was insured by the Federal Deposit
8 Insurance Corporation.

9 Ninth Circuit Model Criminal Jury Instruction 15.36 (March 2023).

10 The United States and the Defendant agree that in order to convict the Defendant of Money
11 Laundering, in violation of 18 U.S.C. § 1957, the United States would have to prove beyond a
12 reasonable doubt the following elements:

13 (a). First, the Defendant knowingly engaged or attempted to engage in a
14 monetary transaction;

15 (b). Second, the defendant knew the transaction involved criminally derived
16 property;

17 (c). Third, the property had a value greater than \$10,000;

18 (d). Fourth, the property was, in fact, derived from Bank Fraud as alleged in
19 Count 15 of the Indictment; and

20 (e). Fifth, the transaction occurred in the United States.

21 Ninth Circuit Model Criminal Jury Instruction 18.7 (Sept. 2022).

22 5. Factual Basis and Statement of Facts:

23 The United States and the Defendant stipulate and agree that the following facts are
24 accurate; that the United States could prove these facts beyond a reasonable doubt at trial; and

1 these facts constitute an adequate factual basis for SUNG PEEL HWANG's guilty plea.

2 The Defendant was born in 1984 and is a citizen of the United States.

3 Beginning at least in September of 2015 and continuing until December 2018, Defendant
4 Hwang was employed as an administrator in the Korean Air Lines (KAL) office at the Guam
5 International Airport (GIAA). KAL operated commercial passenger flights between Guam and
6 South Korea. All airlines operating out of GIAA are required to report the number of passengers
7 on their flights and to pay a corresponding Passenger Facility Charge (PFC) to GIAA. As an
8 administrator at the Guam KAL office, Hwang's duties included reporting the number of
9 passengers and paying the corresponding PFC, procuring and paying for other office supplies and
10 services, and acting as one of two co-signatories on KAL Guam's business checking account at
11 the Bank of Guam. Defendant Hwang also had personal checking and savings accounts at the Bank
12 of Guam. In May of 2017, Hwang changed the mailing address for his accounts and on his personal
13 checks to KAL Guam's address at GIAA.

14 Beginning in at least September of 2015, Hwang began depositing KAL checks made out
15 to pay PFC or other KAL Guam office expenses into his personal checking account. Hwang
16 employed a number of methods in order to make the checks appear legitimate, including lining out
17 the payee and adding his own name, initialing the change, and forging his co-signer's initials,
18 misleading his co-signer into signing blank checks and then making them out to himself, and
19 forging his co-signer's signature on checks that he made out to himself. During the course of the
20 scheme, Defendant Hwang deposited over \$3.5 million dollars in KAL funds into his personal
21 checking account. In order to carry out the scheme and avoid detection, Defendant Hwang paid
22 various office expenses and made partial payments towards the PFC due to GIAA using his
23 personal checking account and checks that were printed with the KAL Guam office address. In
24 order to carry out his scheme, Defendant Hwang reported the correct monthly PFC owed to GIAA

1 to the KAL corporate office in South Korea. Then the KAL corporate office wired that amount to
2 the KAL Guam business checking account at Bank of Guam. Defendant Hwang would then make
3 out a check from the KAL business account in that amount and deposit it into his personal checking
4 account. Defendant Hwang would then generate another report for GIAA showing a smaller
5 amount of monthly PFC due and issue a check from his personal checking account to GIAA in this
6 smaller amount and keep the difference for himself. From October to December 2018, Defendant
7 Hwang deposited fraudulent checks drawn on the KAL Guam business checking account into his
8 personal checking account. These funds were intended for various KAL Guam office expenses,
9 including PFC, and Hwang kept all of the funds for his personal use.

10 Specifically, on December 10, 2018, Defendant Hwang deposited two checks drawn on the
11 KAL Guam business checking account into his personal checking account at Bank of Guam. These
12 checks were intended for the KAL Guam office's monthly lease payment and the November 2018
13 PFC owed to GIAA. The checks totaled \$61,178.07. The checks were made out to Defendant
14 Hwang and included the forged signature of Hwang's co-signer and coworker identified here by
15 initials T.W.K. By presenting the checks with the forged signature, Defendant Hwang represented
16 to Bank of Guam that the checks and included signatures were legitimate. This misrepresentation
17 was material to the bank's decision to honor the checks and Defendant Hwang made this
18 misrepresentation with the intent to defraud Bank of Guam and obtain funds which were held by
19 the bank and owned by Korean Air Lines. At all relevant times, Bank of Guam was insured by the
20 Federal Deposit Insurance Corporation.

21 The following day on December 11, 2018, Defendant Hwang withdrew \$59,000 in cash
22 from his personal checking account at the Bank of Guam. Defendant Hwang knew that these funds
23 were derived from Bank Fraud as charged in count 15 of the indictment, a crime which he had
24 committed the previous day.

1 Defendant Hwang's manipulation of the PFC reporting to KAL's corporate office in South
2 Korea and to GIAA, his modification of his mailing address on his personal bank account to match
3 that of KAL Guam's office address, his payment or partial payment of KAL Guam office expenses
4 and PFC from his personal checking account, and his forgery or manipulation of KAL Guam's
5 business checks and his co-signer's initials and signatures were the means he used to effectuate
6 his scheme. Defendant Hwang derived gross receipts of over \$3.5 million from Bank of Guam as
7 a result of his offense and his scheme caused an actual loss of \$615,271.51 on the part of KAL
8 after accounting for Hwang's payments and partial payments towards legitimate office expenses
9 and PFC.

10 This statement of facts is made for the limited purpose of supporting the Defendant's guilty
11 plea. It therefore does not contain all facts relating to the underlying criminal conduct. This
12 statement of facts does not preclude either party from presenting and arguing, for sentencing
13 purposes, additional facts which are relevant to the guideline computation or sentencing, unless
14 otherwise prohibited in this agreement.

15 6. Waiver of Inadmissibility of Statements:

16 The Defendant agrees to waive the inadmissibility of statements made in the course of plea
17 discussions with the United States, pursuant to Fed. R. Crim. P. 11(f). This waiver shall apply if
18 the Defendant withdraws this guilty plea or breaches this Plea Agreement. The Defendant
19 acknowledges that any statements made by the Defendant to law enforcement agents in the course
20 of plea discussions in this case would be admissible against the Defendant in the United States'
21 case-in-chief if the Defendant were to withdraw or breach this Plea Agreement.

22 7. The United States Agrees:

23 (a.) Dismissal(s):

24 At the time of sentencing, the United States agrees to move to dismiss Counts 1-14, which

1 charge the Defendant with Bank Fraud, in violation of 18 U.S.C. § 1344(1) and Count 16, which
2 charges the Defendant with Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A.

3 (b.) Not to File Additional Charges:

4 The United States Attorney's Office for the Districts of Guam and the NMI agrees not to
5 bring any additional charges against the Defendant based upon information in its possession at the
6 time of this Plea Agreement and arising out of Defendant's conduct involving illegal activity
7 charged in this Indictment unless the Defendant breaches this Plea Agreement any time before or
8 after sentencing.

9 8. United States Sentencing Guideline Calculations:

10 The Defendant understands and acknowledges that the United States Sentencing
11 Guidelines (hereinafter "U.S.S.G.") are applicable to this case and that the Court will determine
12 the Defendant's applicable sentencing guideline range at the time of sentencing. In determining a
13 sentence, the Court is obligated to consider that range, possible departures or variances under the
14 Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a).

15 Bank Fraud

16 (a.) Base Offense Level:

17 The United States and the Defendant agree that the base offense level for Bank Fraud is 7.
18 See U.S.S.G. §2B1.1(a)(1).

19 The United States and the Defendant agree and stipulate that the loss amount in connection
20 with Defendant's Bank Fraud scheme was \$615,271.51; and the Defendant's relevant conduct for
21 sentencing purposes should be calculated based upon this amount, pursuant to U.S.S.G. §1B1.3.

22 (b.) Specific Offense Characteristics:

23 The United States and the Defendant also agree and stipulate that the base offense is
24 increased by an additional fourteen (14) levels because the loss amount is greater than \$550,000

1 but less than \$1,500,000.00. See U.S.S.G. §2B1.1(b)(1)(H).

2 The United States asserts that the base offense level should be increased by an additional
3 two (2) levels because the offense involved sophisticated means and the defendant intentionally
4 engaged in or caused the conduct constituting sophisticated means. See U.S.S.G.
5 §2B1.1(b)(10)(C). The defendant is free to argue the applicability of this provision at sentencing.

6 The United States and the Defendant also agree and stipulate that the base offense level
7 should be increased by an additional two (2) levels because the Defendant derived more than
8 \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense. See
9 U.S.S.G. §2B1.1(b)(17)(A).

10 (c.) Role in the Offense:

11 The United States asserts that the Defendant abused of a position of private trust in a
12 manner that significantly facilitated the commission or concealment of the offense and that the
13 Defendant's base offense level should be increased by two (2) levels. See U.S.S.G. §3B1.2. The
14 defendant is free to argue the applicability of this provision at sentencing.

15 Money Laundering

16 (d.) Base Offense Level

17 The United States and the Defendant agree and stipulate that the base offense level for
18 Money Laundering is the offense level for the underlying offense. The United States therefore
19 asserts that the base offense level is 25. See U.S.S.G. §2S1.1(a)(1).

20 (e.) Specific Offense Characteristics

21 The United States asserts that the base offense level for Money Laundering is increased by
22 one (1) level because the offense of conviction is 18 U.S.C. § 1957. See U.S.S.G. §2S1.1(b)(2)(A).

23 (f.) Multiple Count Analysis:

24 The position of the United States is that, pursuant to U.S.S.G. §3D1.1, one (1) unit is

1 assigned to for each of the counts of conviction resulting in a 2-level increase to the count with the
2 highest offense level; all resulting in a combined adjusted offense level of 29.

3 (g.) Acceptance of Responsibility:

4 If the Defendant pleads guilty and demonstrates a recognition and an affirmative
5 acceptance of personal responsibility for the criminal conduct; provides complete and accurate
6 information during the sentencing process; does not commit any obstructive conduct; accepts this
7 Plea Agreement; and enters a plea of guilty no later than October 27, 2023, the United States will
8 move for a three (3) level downward adjustment in the offense level for the Defendant's timely
9 acceptance of responsibility, pursuant to U.S.S.G. §3E1.1(a) and (b).

10 The Defendant and the United States agree that the United States may at its option and
11 upon written notice to the Defendant, not recommend a three (3) level downward reduction for
12 acceptance of responsibility if, prior to the imposition of sentence, the Defendant is charged or
13 convicted of any criminal offense whatsoever or if the Defendant tests positive for any controlled
14 substance.

15 Furthermore, the Defendant agrees to pay the \$200 mandatory special penalty assessment
16 to the Clerk of Court for the District of Guam, at or before sentencing, and shall provide a receipt
17 from the Clerk to the United States before sentencing as proof of this payment, as a condition to
18 this recommendation by the United States.

19 Therefore, the position of the United States is that the Defendant's final adjusted offense
20 level would be 26.

21 (h.) Criminal History:

22 The United States and the Defendant understand that the Defendant's criminal history
23 computation is tentative and that ultimately the Defendant's criminal history category will be
24 determined by the Court after review of the Presentence Investigative Report. The United States

1 and the Defendant have made no agreement and make no representations as to the criminal history
2 category, which shall be determined after the Presentence Investigative Report is completed.

3 9. Departures:

4 The Defendant and the United States understand and acknowledge that, at sentencing, they
5 are free to make whatever sentencing recommendations for whatever reasons they deem are
6 appropriate. That is, the United States and the Defendant are free to seek an upward or a downward
7 departure from the applicable sentencing guideline range.

8 10. Incarceration:

9 (a.) Length of Imprisonment:

10 The United States and the Defendant agree to recommend that the Court impose a sentence
11 at the low end of the applicable sentencing guideline range.

12 11. Criminal Fine:

13 The United States and the Defendant are free to make whatever recommendation
14 concerning the imposition of a criminal fine that they believe is appropriate.

15 12. Supervised Release:

16 The United States and the Defendant agree to recommend that the Court impose a 3-year
17 term of supervised release to include the following special conditions, in addition to the standard
18 conditions of supervised release: (1) that the Defendant provide financial information, provide
19 copies of Federal income tax returns and allow credit checks, at the direction of the Probation
20 Officer; (2) that the Defendant shall disclose all assets and liabilities to the Probation Officer and
21 shall not transfer, sell, give away, or otherwise convey or secret any asset, without the advance
22 approval of the Probation Officer; (3) that the Defendant be prohibited from incurring any new
23 debt, opening new lines of credit, or enter any financial contracts or obligations without the prior
24 approval of the Probation Officer; and (4) that the Defendant participate and complete financial

1 counseling and life skills programs at the direction of the Probation Officer;

2 13. Restitution:

3 The United States and the Defendant hereby stipulate and agree that, pursuant to 18 U.S.C.
4 §§ 3663, 3663A and 3664, the Court should order restitution to KAL in the amount of \$615,271.51.

5 14. Mandatory Special Penalty Assessment:

6 The Defendant agrees to pay the \$200 mandatory special penalty assessment to the Clerk
7 of Court for the District of Guam, at or before sentencing, pursuant to 18 U.S.C. § 3013 and shall
8 provide a receipt from the Clerk to the United States before sentencing as proof of this payment.

9 15. Payments While Incarcerated:

10 If the Defendant lacks the financial resources to pay the monetary obligations imposed by
11 the Court, the Defendant agrees to earn the money to pay toward these obligations by participating
12 in the Bureau of Prisons' Inmate Financial Responsibility Program.

13 16. Financial Disclosure Obligations:

14 Defendant agrees to submit to the United States Attorney's Office for the Districts of Guam
15 and the NMI, within three weeks of the execution of this plea agreement, a complete, accurate and
16 truthful financial statement and accompanying releases, in a form it provides and as it directs.
17 Defendant agrees to disclose all assets in which he has any interest or over which he exercises
18 control, directly or indirectly, including those held by a spouse, nominee or other third party.
19 Defendant authorizes the United States Attorney's Office for the Districts of Guam and the NMI
20 to obtain a credit report on him to evaluate his ability to satisfy any financial obligation imposed
21 by the Court.

22 Defendant understands and agrees that any monetary penalties imposed by the Court will
23 be due and payable immediately and subject to immediate enforcement by the United States,
24 pursuant to 18 U.S.C. § 3613. Defendant understands that, by law, interest accrues on any

1 remaining balance of the debt. Defendant agrees not to dissipate assets. If Defendant is financially
2 unable to immediately pay any monetary penalties in full, Defendant agrees: (a) to cooperate with
3 the United States Attorney's Office; (b) to provide updated financial statements upon request by
4 the United States Attorney's Office and to keep the office advised about Defendant's current
5 address; and (c) for his debt to be placed on the Treasury Offset Program and any tax refund/rebate
6 offset program existing in his state of residency. Defendant understands that any funds captured
7 by an offset program will be paid towards his monetary penalties, but does not relieve him of his
8 obligation to pay the monetary penalties in full.

9 **17. Additional Violations of Law Can Void Plea Agreement:**

10 The Defendant and the United States agree that the United States may at its option and
11 upon written notice to the Defendant, withdraw from this Plea Agreement or modify its
12 recommendation for sentence if, prior to the imposition of sentence, the Defendant is charged or
13 convicted of any criminal offense whatsoever or if the Defendant tests positive for any controlled
14 substance.

15 **18. Appeal Rights:**

16 Defendant understands that he has a limited right to appeal or challenge the conviction and
17 sentence imposed by the Court. Defendant hereby expressly waives his right to appeal his
18 conviction. Defendant further expressly waives his right to file any post-conviction motion
19 attacking his conviction, including a motion pursuant to 28 U.S.C. § 2255, except one based upon
20 ineffective assistance of counsel based on information not now known by Defendant and which,
21 in the exercise of due diligence, could not be known by Defendant by the time the Court imposes
22 the sentence.

23 **19. Hyde Amendment Waiver:**

24 The Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A

(Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.


20. Integration Clause:

The United States and the Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Districts of Guam and the NMI, and cannot bind other federal, state or local authorities. The United States and the Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Districts of Guam and the NMI.

Shawn N. Anderson
United States Attorney


Benjamin K. Petersburg
Assistant U.S. Attorney

11/3/2023
Date

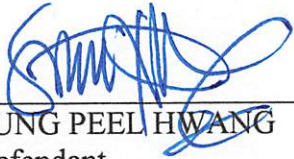
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I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement.

1 Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I
2 am satisfied with the representation of my attorney in this case. No other promises or inducements
3 have been made to me, other than those contained in this Plea Agreement and no one has threatened
4 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because
5 I am guilty.

6
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8 
9 _____
SUNG PEEL HWANG
Defendant

10/20/2023

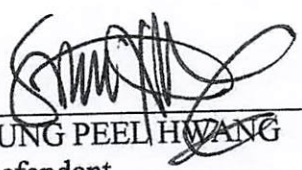
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10 I have read the Plea Agreement and have discussed the contents of the agreement with my
11 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement
12 between the parties. I concur in my client's decision to plead guilty as set forth in the Plea
13 Agreement. There is no legal reason why the Court should not accept the Defendant's plea of
14 guilty.

15
16
17 _____
18 Rawlen Mantanona
Attorney for the Defendant

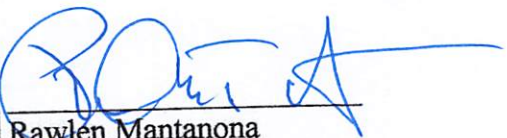
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1 Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I
2 am satisfied with the representation of my attorney in this case. No other promises or inducements
3 have been made to me, other than those contained in this Plea Agreement and no one has threatened
4 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because
5 I am guilty.

6
7
8 
9 SUNG PEEL HWANG
Defendant

10/20/2023
Date

10 I have read the Plea Agreement and have discussed the contents of the agreement with my
11 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement
12 between the parties. I concur in my client's decision to plead guilty as set forth in the Plea
13 Agreement. There is no legal reason why the Court should not accept the Defendant's plea of
14 guilty.

15
16 
17 Rawlen Mantanona
18 Attorney for the Defendant

10/25/23
Date